

**ZONING BOARD OF APPEALS**  
**MEETING MINUTES**  
**November 12, 2013**  
**4:00 P.M.**

**CALL TO ORDER:** Mr. John Stetler, Chairperson called meeting to order at 4:00 P.M.

**ATTENDANCE:**

**Members Present:** Rick Barnes                      Becky Squires  
                                 Deland Davis                      Carlyle Sims  
                                 Greg Dunn                      John Stetler  
                                 Sharon Heisler

**Members Excused:** James Moreno

**Staff Present:** Marcel Stoetzel, City Attorney Ofc.  
                                 Glenn Perian, Senior Planner  
                                 Leona Parrish, Admin. Assistant, Planning Dept.

**ADDITIONS OR DELETIONS TO THE AGENDA:** None

**CORRESPONDANCE:** None

**OLD BUSINESS:** None

*Mr. John Stetler, Chairperson stated the meeting procedure where everyone present may speak either for or against an appeal and that he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. Stetler stated if denied the petitioner may appeal to the Circuit Court.*

**NEW BUSINESS:**

**A) Zoning Use Variance Appeal #Z-05-13:**

Petition from Mr. Aaron Stinson, Hurley & Stewart, LLC, 2800 S. 11<sup>th</sup> St., Kalamazoo, MI 49009, on behalf of owner Andert Properties, LLC. Requesting a variance to waive the required 10 ft. buffer between parking area and residential properties for property zoned "O-1 Office District"; for property located at: 151 North Avenue (Parcel #5240-00-090-0; #5240-00-095-0; & #5240-00-095-1); application is requested pursuant to Planning and Zoning Code, Chapter 1284.02 (g).

Mr. Glenn Perian, Senior Planner, Planning Department outlined the report stating appeal #Z-05-13 is a petition from Mr. Aaron Stinson, Hurley & Stewart, on behalf of Andert Properties seeking approval of a Dimensional Variance to waive the required 10 ft. buffer between parking areas and residential properties for property located at 151 North Avenue pursuant to Chapter 1284.02(g). The current parking areas west and south of the building do not conform to the requirements of the

planning and zoning code with respect to proper buffering between parking areas and residential properties. Currently, there is no buffer between the parking areas and residential properties along Glenwood Avenue. These parking areas are considered legal nonconforming and may continue into perpetuity as such including maintenance (and resurfacing) of the nonconforming lots. The request is to completely tear out the existing parking surfaces to the west and southwest of the building, and by doing so, negating the nonconforming status of the parking lots. Planning Staff is recommending denial of appeal #Z-05-13 based on the following findings and those listed in the staff report:

- A) Staff finds the practical difficulty from failure to grant the variance will include substantially more than a mere inconvenience in this case. From information submitted by the appellant the current use of the property requires 25 parking spaces. The proposed plan shows a total of 46 spaces being provided if the variance is granted.
- B) Staff does not believe that the practical difficulty is exceptional and peculiar to the subject parcel and staff believes that the parcel of land could reasonably be built upon in conformance with the requirements of the ordinance by reconfiguring or reducing the size of the lot and complying with the ordinance requirements for buffering.
- C) Staff believes that if the variance is granted that the intent of the ordinance will be altered or that the rights of others will be compromised. Therefore, the variance should not be granted and we are recommending denial of this appeal.

Mr. Greg Dunn asked Mr. Perian regarding A) above if what he was saying is the practical difficulty from failure to grant the variance will include substantially more than an inconvenience in this case; is that what you are meaning to say. Mr. Glenn Perian stated “No” it would “NOT” be more than an inconvenience in this case; “NOT” should have been added to that statement.

Mr. John Stetler asked if the city ordinance defines replacement and/or resurfacing. Mr. Perian stated “no”; that in past practice it has been policy that if you remove the entire lot than anything new must be brought into conformance with the code. Stated by resurfacing it is considered as maintenance which is allowed to maintain the parking surface.

Mr. Stetler asked if they left the gravel base, which he would assume they would; would that not be considered resurfacing. Mr. Perian stated if they do not tear out the lot, no; it can be maintained but not tear it out and put in a new lot surface.

Dr. Jeff Andert, 144 Waupakisco Beach, Battle Creek, property owner came forward to speak. Stated he was looking to improve their property and upgrade the parking lot and need the additional space for the customers they serve as well as the staff. Said they have a lower level that is approximately 2,500 ft. that they want to gain access to and they need to add a ramp for accessibility according to American Disability Act and in order to do so they would need to remove the drive at their front building as cars drive through to College Street. Said they would like to eliminate the drive through and gain access to the lower level and improve the parking lot. Noted that with the additional office space in the lower level they would then be required to have 10 or 12 additional parking spaces. Stated the space between the two homes, one of the properties was owned by Bank of America and had been vacant for years and the other was Ms. Dowdle owns and they have had her property surrounded and has been this way as long as they have there. Said if they were not allowed the variance the area would only be able to be used as a drive-thru or as

green-space and would lose those parking spaces and then not meet the required parking or follow through with their plans for their lower level.

Mr. Tim Stewart, Hurley & Stewart, Kalamazoo, MI stated they noted the incorrect number of parking spaces in their application that would be needed as being 36 parking spaces and if they want to improve the lower level of the building; it would require the additional parking to be a total of 45 spaces. Said the existing condition of parking lot is falling apart, cracked, need improved drainage, and will not be any closer to the property line than what it is currently.

Mr. Greg Dunn asked if the property is improved for the lower level that the city ordinance would require 45 parking spaces. Mr. Stewart stated yes, there is no way to add those additional spaces without waiving the 10 ft. buffer. Mr. Stewart provided a new design drawing for the zoning board to review that shows a one-way driveway and not a two-way as it would only be 19 ft. wide.

Mr. Deland Davis asked regarding the shape of the driveway and if an exit may be on College Street as there appears to be sufficient space available. Mr. Stewart stated the intent was to say Glenwood and not College Street in the document.

Mr. Greg Dunn asked if they had tried to purchase one of the adjacent properties that is bank owned. Mr. Andert stated yes 20 Glenwood Ave., the bank would not negotiate a sale as they are reluctant to release too many foreclosed properties even though they have indicated to them they wished to purchase and demolish the structure for a parking lot. Stated Ms. Dowdle is not interested in selling and the duplex have had some discussion, but would not be an advantage to them if they could not purchase the other adjacent property owned by the bank.

Mr. Dunn stated the zoning board cannot approve their request based on financial reasons.

Mr. Deland Davis asked if they planned to continue to use the parking area on the corner of North Avenue and Glenwood Avenue that holds 16 cars. Dr. Andert stated yes, the plan is to improve the building front and walkways in the front to that parking area as well.

Mr. Glenn Perian stated the new proposed plan they provided today to the board for review show a 10 ft. buffer and square footage change to be 7,405 sq. ft. requiring an office business to have a total of 38 parking spaces; the revised plan show 39 spaces with a 10 ft. buffer and would then meet the number of spaces required by the ordinance.

Mr. Tim Stewart stated the ordinance requires 38 as the number of minimum spaces and if they were to increase staffing and/or patients they would need additional parking spaces.

Mr. Carlyle Sims asked on a day-to-day basis if they have the parking filled to its maximum spaces. Dr. Andert stated they have persons parking in non-designated parking areas on the back side of the building.

Mr. Dunn stated he drove thru the location today at 2:30 pm; noted there was not a crunch for parking and noticed there were no parking signs on College St. and Glenwood Ave. Stated parking was available on the other side of Glenwood Ave. and also on Groveland Avenue.

Mr. Jesse Potter property owner of 24 Glenwood Ave. on the corner of Glenwood Ave. and College St. stated he talked to Dr. Andert about 1 ½ years ago regarding purchasing his property and had not heard anything further from him. Said his tenants had been complaining about the parked cars and also have children and does not want the buffer removed as it would take away their play space. Stated he contacted Bank of America regarding the other adjacent property and said no one had asked about purchasing their property. Said he is not in favor of approving this variance request of removing the buffer.

Mr. Stetler wanted to note to Mr. Potter that the 10 ft. buffer does not apply to his property, but to Dr. Andert's property. Mr. Potter said yes he understood.

Mr. Tim Stewart wanted to state a rebuttal; said they are only requesting a variance where there is existing parking and drives currently and would not be taking away any buffers and noted there is an existing screening fence and they plan to add additional screening if variance is approved.

*Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.*

**MOTION WAS MADE BY MS. BECKY SQUIRES TO APPROVE THE DIMENSIONAL VARIANCE REQUEST APPEAL #Z-05-13 FOR 151 NORTH AVENUE TO WAIVE THE REQUIRED 10 FT. BUFFER BETWEEN PARKING AREA AND RESIDENTIAL PROPERTIES FOR A PROPERTY ZONED "O-1 OFFICE DISTRICT" AS PRESENTED; SUPPORTED BY MR. CARLYLE SIMS.**

**Discussion:**

Mr. Greg Dunn stated he was confused regarding the difference between resurfacing and removal of old and replacing with new; asked where this policy comes from. Mr. Perian stated the policy for non-conforming structures states it can be maintained as is; once the surface is removed it then has to be done to comply with the city ordinance.

Mr. John Stetler stated in his opinion if they repair the old it can be done badly and if they were to be resurfacing he would be in favor of the motion.

Mr. Deland Davis stated seeing the parking lot it appears that the wear and tear over the years where it was just resurfaced looks bad and seems they just want to remove the old that is left and replace with new.

Mr. Carlyle Sims stated he feels if they are improving the property by doing a new parking lot; then it should be allowed to be done without a variance.

Mr. Greg Dunn stated a concern of his was that the adjacent residential properties are not getting a setback as they should from the parking. Stated he is struggling to approve this variance request.

Mr. Rick Barnes asked Mr. Perian if they left the parking lot as is currently and just resurfaced it would it be alright. Mr. Glenn Perian stated yes.

Mr. Greg Dunn said they need to look at redefining parking lots in the city ordinance. Mr. Perian stated the decision made by the zoning board today will provide an answer and set the precedence of what is allowed for the future regarding resurfacing and/or replacement.

Mr. Deland Davis stated currently the plan shows 0 ft. buffer and if they could compromise and maybe have at least a 5 ft. buffer as it does appear to be close to the adjacent houses. Mr. Stewart stated it would be about 1 – 2 ft. along the east side and are proposing a 4 ft. screening fence that is not there currently. Said there would not be room to move back 5 or 6 ft. without losing parking spaces.

Mr. Deland Davis asked if there was room for parking on both sides by the entrance off Glenwood. Mr. Tim Stewart said there was only one side on the east where parking is allowed.

Mr. Greg Dunn asked if the new ramp will be placed on the north side and by doing this how many parking spaces would they lose and when did they want to do this project. Dr. Andert stated the new ramp would remove 8 parking spaces and they would like to do this project in the springtime.

**MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; FIVE IN FAVOR (BARNES, DAVIS, SIMS, SQUIRES AND STETLER); TWO OPPOSED (DUNN AND HEISLER), MOTION APPROVED.**

**B) Approval of Zoning Board of Appeals Year 2014 Meeting Dates**

**MOTION: WAS MADE BY MR. GREG DUNN TO APPROVE THE YEAR 2014 MEETING DATES FOR THE ZONING BOARD OF APPEALS MEETINGS AS PRESENTED; SUPPORTED BY MS. BECKY SQUIRES.**

**ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED –MINUTES APPROVED.**

**APPROVAL OF MINUTES:**

**MOTION: WAS MADE BY MR. CARLYLE SIMS TO APPROVE THE MAY 14, 2013 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MR. DELAND DAVIS.**

**ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED –MINUTES APPROVED.**

**COMMENTS BY THE PUBLIC: None**

**COMMENTS BY THE MEMBERS / STAFF: Mr. Greg Dunn wanted to take this opportunity wish everyone a wonderful holiday season in case there were no other meetings this year and wish all the best and look forward to working with everyone in the year 2014.**

**ADJOURNMENT: Meeting was adjourned at 4:24P.M.**

Submitted by: Leona A. Parrish, Administrative Assistant, Planning Department